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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 268

STERLING P. HARRIS, Administrator of the Estate of Anna L. Harris, Deceased Debtor,

Petitioner,

vs.

ZION'S SAVINGS BANK AND TRUST COMPANY.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

J. D. Skeen,
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Petitioner,

vs.

ZION'S SAVINGS BANK AND TRUST COMPANY.

PETITION FOR WRIT OF CERTIORARI.

The petition of Sterling P. Harris as administrator of the Estate of Anna L. Harris, deceased, respectfully shows to the court:

That on the 20th day of December, 1937, Anna L. Harris filed a petition in the United States District Court for the District of Utah praying for relief under Section 75 of the Bankruptcy Act. The said petition recited that she was a farmer within the purview of the Act and there was attached thereto, schedules A and B showing liabilities of $8430 and assets of an estimated value of $32,500. Said matter was referred to the Conciliation Commissioner for

Salt Lake County, who called and held a meeting of creditors. The debtor made an offer of composition and extension on the 21st day of February, 1938. She died on the 23rd day of November, 1938 and on March 30, 1939, letters of administration of the estate of the deceased debtor issued to Sterling P. Harris, the surviving husband, who is the petitioner herein.

On February 15, 1940 the administrator filed his petition in the District Court of the United States for the District of Utah, praying for an order reviving the proceedings under Section 75 of the Act. Attached to the petition was an order of the probate court authorizing the administrator to petition for the revival of the proceedings pending at the time of the death of Anna L. Harris or to institute new proceedings in the United States District Court as advised. On February 15, 1940, the District Court entered an order of revival. Zion's Savings Bank and Trust Company appealed from the order of the probate court to the Supreme Court of the State of Utah and served notice that it had given bond to stay the proceedings. On the 13th day of September, 1940, the Supreme Court of Utah reversed the District Court and set aside the order of the probate court authorizing the administrator to revive the Federal Court proceeding. The opinion of the Supreme Court of Utah is reported in 99 Utah 464, 105 P. (2d) 461.

On September 18, 1940, Sterling P. Harris deposited an Amended Petition in the office of the Clerk of the United States District Court, praying for relief under subsection (s) of Section 75 of the Bankruptcy Act. The petition was endorsed by the Clerk as received on that date.

The administrator applied to this Court for a writ of certiorari to the Supreme Court of Utah. The writ was granted, 312 U. S. 670, 85 L. ed. 1112; and after argument, was dismissed, 313 U. S. 541, 85 L. ed. 1509. In the order of dismissal this Court said:

"April 14, 1941. Per Curiam: Upon appeal from an order of the Probate Court of Salt Lake County, Utah, purporting to authorize an administrator of a deceased farmer to file a petition for relief under Section 75 of the Bankruptcy Act, 11 USCA, Section 203, the Supreme Court of Utah has held that under the Probate Code of the State the Probate Court had no power to make the order. The decision thus rests upon an adequate non-Federal ground, and as the Federal question, whether in such circumstances a District Court of the United States sitting in bankruptcy could entertain a petition of the personal representative of the deceased farmer under Section 75 of the Bankruptcy Act was not necessarily involved, the writ of certiorari is dismissed."

During the pendency of the appeal from the order of the probate court to the Supreme Court of Utah and the proceedings in this Court, all proceedings in the District Court of the United States were held in abeyance. On the 29th day of August, 1941, Zion's Savings Bank and Trust Company filed a motion to strike the petition for the revival of the proceedings filed by the administrator and to dismiss the proceeding upon the following grounds, to-wit:

(1) "That each of said petitions were filed without any order or authorization or in that behalf of the state probate court, the District Court of Salt Lake County, Utah, which appointed said administrator and wherein the estate of said deceased was and is pending; and (2) that said administrator is and at all times was without right, power or authority under the laws of the State of Utah to file said petitions or otherwise enter into bankruptcy, and said petitions and each of them were and are wholly void."

A hearing of said matter was had and the District Court made findings of fact, reciting the proceedings as hereinabove set out, from which it drew the following conclusions:

"1. That being without any order or authority of the State probate court so to do, said administrator was without right or authority to petition this court to reinstate and continue these proceedings under said Section 75 or to petition this court for relief under subsection "s" thereof. That by the state law of Utah as determined by the Supreme Court of said state in the matter of said Anna L. Harris, deceased, as aforesaid, the administrator is without power to petition and the probate court is without power or jurisdiction to authorize him to petition this court for relief, and this court was without power or jurisdiction to accept or receive his petition.

2. That therefore the order of this court given and made herein February 15, 1940, ordering these proceedings to be continued by said administrator should be vacated, annulled and set aside and held for naught, and the petition of said administrator theretofore filed herein February 13, 1940 praying to revive these proceedings under said Section 75 should be dismissed.

3. That the amended petition of said administrator praying that the estate of said deceased be adjudged bankrupt and for other relief pursuant to subsection "s" of said Section 75, which petition was presented to the clerk of this court by said administrator September 18, 1940, but not filed, was properly refused for filing and should not be received or filed herein.

4. That said amended motion of Zion's Savings Bank and Trust Company to strike the petition of said administrator praying to revive and reinstate these proceedings under said section 75 and to strike the amended petition of said administrator aforesaid and to dismiss these proceedings should be denied.

Let the order of the court be made and entered accordingly.

Dated at Salt Lake City, Utah, this 30th day of September, 1941.

Tillman D. Johnson, Judge."

On October 23, 1941 an appeal was taken from the District Court to the United States Circuit Court of Appeals for the Tenth Circuit. The record was completed, the case orally argued and on May 5, 1942, the Circuit Court of Appeals filed its opinion and decision affirming the judgment of the District Court. The opinion is published in 127 F. 2d 1012 (R. 22).

The questions presented by this application may be briefly stated as follows:

I.

Is the jurisdiction of the United States District Court to grant relief to the administrator of a deceased farmer under the provisions of Section 75 of the Bankruptcy Act, dependent upon the statutes of the State of Utah and the rulings of the Supreme Court of the State, granting authority to the probate court to order the administrator to make the application for such relief, or, stated negatively, can a state withhold or deny the right of an administrator to seek and receive the benefits given by Section 75 of the Bankruptcy Act?

II.

Is General Order 50-9 to be construed as restricting or limiting the rights conferred by Section 75, Subsection (r) of the Bankruptcy Act, or otherwise stated, should General Order 50-9 be construed to mean that the administrator must supply the order showing he is authorized to make the application only if he can procure it?

III.

Is Section 75 (r) to be given uniform application in all of the States of the United States, as provided by the Constitution, Article 1, Section 8, or is there a lack of uniformity in the application of the Act giving it effect only in

states in which administrators are authorized to make the application or in cases in which a probate court may see fit to make the order required by General Order 50-9, or does the United States law prevail in all cases and can the administrator in all cases, regardless of orders of the probate court, apply for and be given the relief authorized by Section 75 of the Act?

IV.

When the State Court appoints an administrator of an estate, may he not look to the Constitution and Statutes of the United States as the Supreme Law of the Land for authority to make application for relief under Section 75 of the Act?

V.

Is Section 8 of the General Bankruptcy Act, providing that "the death or insanity of a bankrupt shall not abate the proceedings, but the same shall be conducted and concluded in the same manner so far as possible, as though he had not died or become insane," applicable to proceedings under Section 75 of the Act?

The writ of certiorari should be granted for the following reasons:

1. The construction of Section 75 (r) by this court is of the utmost importance in the administration of the Act because, under the Constitution, the Act must be given uniform application, which it cannot be given if either the legislature or the courts of the various states are permitted to take from the administrator the rights granted.

2. Section 75, subsection (r) of the Act expressly includes in the definition of a farmer, "the personal representative of a deceased farmer", who, by other provisions of the Act, is given the absolute right to file the petition in the United

States Court and to permit the proceeding to be nullified by a probate court or by the Supreme Court of the state or by the legislature, would necessarily disregard the supremacy of the Constitution and laws of the United States.

3. The construction of General Order 50-9 in connection with Section 75 (r) by this Court is necessary as a guide to the lower courts in the administration of the law, inasmuch as the Circuit Court of Appeals took the position that it was without power to, in any respect, limit or restrict the application of General Order 50.

4. It is of the utmost importance that Section 8 of the Bankruptcy Act, providing that proceedings shall not abate by reason of the death or insanity of a bankrupt, should be construed by this Court in connection with Section 75 of the Act.

5. This question has been presented to and passed upon by various District and Circuit Courts of Appeal of the United States, which courts, as presently indicated, have arrived at different conclusions.

In re Buxton's Estate, 14 Fed. Supp. 616;
In re Reynolds Estate, 21 Fed. Supp. 369.

These cases hold there is no authority in the state statutes for the granting of an order to make application for relief under Section 75 in the Federal Courts. They are disapproved in

Hines v. *Farkas*, CCA 5th Circuit, decided January 22, 1940, 109 F. (2d) 289.

Chapman v. *Federal Land Bank of Louisville*, 117 F. (2d) 321, retained jurisdiction after the probate court had once made an order authorizing the filing of the petition. Neither of these cases is precisely in point because the

state court had not previously held the probate court to be without authority to authorize the filing.

A District Court in New York held in *re Morgan*, 15 Fed. Supp. 52, that a proceeding pending under Section 74 of the Bankruptcy Act, at the time of the death of the debtor was not abated by the death; that the Federal Court having previously had jurisdiction retained it. The Circuit Court of Appeals of the First Circuit in *Beniteze, et al.* v. *Anciani*, decided May 25, 1942 reported in 127 F. (2d) 121, supports our contention that section 8 of the General Bankruptcy Act applies to section 75.

The Circuit Court of Appeals in this case held specifically that General Order 50-9 controlled and it was not at liberty to consider the question as to whether the General Order is in conflict with the statute and further, that section 8 of the General Bankruptcy Act, providing that a proceeding in bankruptcy shall not abate by reason of the death of the bankrupt, has no application under Section 75 of the Act.

Sterling P. Harris, Administrator of the Estate of Anna L. Harris, deceased debtor, v. *Zion's Savings Bank and Trust Company*, decided May 5, 1942, 127 F. (2d) 1012 (R. 22).

WHEREFORE, petitioner prays that a writ of certiorari issue by this Court directing that all proceedings of the Circuit Court of Appeals be duly certified and that the judgments of the Circuit Court of Appeals and of the District Court be set aside and that said proceeding be reinstated and relief granted as by the statute provided.

Respectfully submitted,

J. D. SKEEN,
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Attorneys for Petitioner.

SUPPORTING BRIEF.

This Court is given authority by section 240 of the Judicial Code, 28, U. S. C. A., section 347, page 359 and by section 24A of the Bankruptcy Act, to issue the writ of certiorari in this case.

The writ should be granted because:

By section 75 of the Bankruptcy Act, a farmer may file a petition in the United States District Court and procure the benefits of the Act and upon the filing of the petition by 75 (n) the Federal Court is invested with exclusive jurisdiction over the farmer and his property. By subsection (r) the personal representative of a deceased farmer is a farmer within the purview of the Act. There is no reservation in the statute of any character. The right is conferred upon the personal representative as a farmer absolutely and unconditionally. He is required to produce no papers except the petition with schedules. It is elementary that a right granted by Congress may not be taken away by a State.

Kalb v. *Feuerstein*, 308 U. S. 433, 84 L. Ed. 370, in this case the court said:

> "The states cannot, in the exercise of control over local laws and practice, vest State Courts with power to violate the supreme law of the land."

Hines v. *Lowery*, 305 U. S. 85; 83 Law Ed. 56.

The fact that the Federal Courts do not possess probate powers is beside the question. When the probate court, however, creates a farmer, to-wit: the personal representative of a deceased farmer, that farmer is vested in his representative capacity with all the rights given by the Federal Statute. The State may not create the entity which is instantly possessed of the Federal rights and at the same time take the rights away.

The confusion of the law resulting from different rulings of different courts of the United States and particularly with the direct holding of the Circuit Court of Appeals of the Tenth Circuit in this case has the effect of frittering away the rights so given. We have called attention to the cases in the petition filed herewith.

It will be observed by the petition that this proceeding was pending in the Federal Court at the time of the death. It is essentially a bankruptcy proceeding. There is no provision in Section 75 dealing directly with the situation resulting from the death or insanity of the debtor. By subsection (n) it is provided:

> "In proceeding under this section, except as otherwise provided herein, the jurisdiction and power of the court, the title, powers and duties of its officers, the duties of the farmer and the rights and liabilities of creditors, and of all other persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged, a bankrupt was filed with the Clerk of the Court or left with the Conciliation Commissioner for the purpose of forwarding the same to the clerk of the court."

No reference is made in the opinion of the Circuit Court of Appeals to this provision of the statute, but the court disposes of the claim that Section 8 of the Bankruptcy law controls with the simple suggestion that the purposes of Section 75 are different from those of the General Bankruptcy Act. Section 8 specifically provides that the proceeding shall not abate because of the death or insanity of the bankrupt. That has to do directly with the jurisdiction of the court. From the quotation from subsection (n) it will be observed that it also deals directly with the jurisdiction and powers of the court and that they are the same

as if an adjudication had been made in a voluntary bankruptcy proceeding. No good reason exists for holding that Section 8 does not control in this case. In the confused state of the law, the rights of farmers are different in Oklahoma, Illinois, Kentucky, Porto Rico, California, and Utah.

This situation is further complicated by the requirements of General Order 50-9, which, taken literally, would seem to impose the condition that the order of the probate court be attached at all events. Great deference is given to this General Order resulting in an interpretation having the effect of a modification of the statute.

As stated by the Circuit Court of Appeals of the Tenth Circuit in this case, it is not competent for a Circuit Court of Appeals to disregard it and hence, the debtor is deprived of the clear statutory right through a combination of the construction of General Order 50 and the ruling of a State court. Even the statute 75-b provides in so many words that this Court is authorized to make the general orders, "but any District Court of United States may, for good cause shown and in the interest of justice, permit any such general order to be waived." The Circuit Court of Appeals has not seen fit to give effect to these words.

It is respectfully submitted that a writ of certiorari should issue in this case in order that the law may be made definite and certain.

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